THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.2546 of 2009

JUDGMENT:

The appellants / claimants, aggrieved by the award and decree dated 09-03.2006, passed in O.P.No. 1994 of 2003, in the file of Motor Accidents Claims Tribunal (District Judge at Nizamabad), partly allowing and awarding compensation of Rs.6,29,500/- against the respondents Nos.1 and 2 therein jointly and severally with proportionate costs and interest at the rate of 7.5% per annum and directing them to deposit the same within two months from the date of award, preferred this appeal, mainly contending that the Tribunal erred in fixing the monthly income of the deceased at Rs.4,500/-, not awarding any amount under the head of love and affection and loss of estate and also awarding a meagre amount of Rs.6,29,500/- against the claim of Rs.15,00,000/-. The appellants further contend that the Tribunal has also not awarded any amount under future prospects and allowed interest @7.5% per annum only.

2. On the other hand, the respondents contended that when the bus was proceeding in the outskirts of Sadasivanagar near Mallannagutta Sugar Factory at 9.P.M., a motor cycle with pillion rider coming beyond the lorry from Kamareddy side at high speed over took the lorry and dashed right side bumper of the bus. There is no negligence on the part of the driver of the bus. The accident took place due to negligent driving of the rider of the motor cycle, who alone is responsible for his death.

3. The case of the appellant in brief is that on 12.03.2007, while deceased Samala Narsimlu alongwith one Boidi Hanmandlu were going on the T.V.S. Suzuki Motor Cycle bearing No. AP-25/C-611 towards Sadashivnagar Nagar on the left side of the road, very slowly and cautiously, when they reached to Mallannagutta near Gayatri Sugar Factory at about 9.15 P.M., a bus bearing No.MH-20D-4693, which was going towards Kamareddy side, came at high speed in rash and negligent manner and hit the motor cycle on which the deceased and Hanumandlu were proceeding. As a result, the deceased and Hanumandlu fell down from the motor cycle and the bus ran over the deceased, resulting in fractural injuries, crush injuries to face skull and brain, fracture of waist, fracture of right leg and multiple injuries on various parts of the body. While shifting to the hospital, the deceased succumbed to injuries on the way. The deceased was aged about 30 years, he was hale and healthy, doing textile business and cultivation. He used to earn Rs.15,000/- per month on textile business and Rs.1,25,000 per annum on cultivation and contributed the same for his family maintenance.

4. The 1st appellant is mother and the 2nd appellant is wife and appellants 3 to 5 are children of the deceased.

5. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

> ***"1. Whether the accident had occurred due to rash and negligent driving of the RTC the vehicle bearing No.MH-20-/D-4693 by its driver?***
> ***2. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?***
> ***3. To what relief?"***

6. The appellants are not disputing the findings of the Tribunal that the accident was due to the negligence of R.W.1, who was the then driver of the bus involved in the accident bearing No. MH-20D-4693.

7. In support of the claim, P.Ws1 and 2 were examined, supported by documentary evidence at Exs.A1 to A8. On behalf of respondents R.W.1 was examined and marked Exs. B1 to B3.

8. The Tribunal, on issue No.1 elaborately discussed the evidence of P.W.1,2 and R.W.1, considering documentary evidence at Ex.A1 - copy of the FIR, Ex.A2 – copy of inquest Panchanama, EX.A3- copy of remand case diary, Ex.A4-Income certificate issued by M.R.O., Gandhari, Ex.A5-Bonafide certificate of petitioner No.5, Ex.A6-Bonafide certificate of petitioner No.4, Ex.A7-Bonafide certificate of petitioner No.3, Ex.A8 – copy of Pattadar pass book. Ex.B1-copy of judgment in CCNo. 84/02 of Spl.JFCM, Kamareddly, Ex.B2- copy of sketch map of scene of offence, and Ex.B3-copy of MVI report.

9. The 2nd petitioner was examined as P.W.1. Admittedly, there is no eye witness to the accident, hence the remaining evidence is of P.W..2, who was working in Gayatri Sugar Factory, which is located near the accident spot. The evidence of P.W.2 is that on the night of the accident at 9.30 P.M. after attending the duty, he came out of the factory and was standing in front of main gate on the National High Way road. At the time he found two persons were going on T.V.S. Suzuki motor cycle from Kamareddy towards Nizamabad side on the

left side of the road. At that time, one bus which belongs to Maharastra Road Transport Corporation came at high speed, on the wrong side of the road in rash and negligent manner, hit the T.V.S. Suzuki motor cycle, as a result of which, the driver of the motor cycle and pillion rider fell down and sustained grievous injuries.

10. A complaint was presented with regard to the accident which occurred on 12.03.2002 at 9.15 P.M. by Upa Sarpanch of Mathu Sangam, alleged that on 12.03.2002 at 9.15 P.M., Samala Narsimlu along with one Boidi Hanmandlu were proceeding on TVS Suzuki motor cycle bearing No. AP-25/C-611 on National High Way. In the meanwhile, a bus which belongs to Maharastra State Transport Corporation bearing No. MH-20D-4693, came from Kamareddy side and dashed the motor cycle. Police registered FIR on the complaint of the above complainant at 8.10 a.m. on 13.03.2002 which is marked as Ex.A1. The Ex.A2-copy of the inquest panchanama and Ex.A3-copy of Remand case Dairy also narrated the same In Ex.B3 – copy of Motor Vehicle Inspector report, it was specifically mentioned that right side bumper of the bus dashed the motor cycle, due to which the bumper was damaged. The driver of the offended bus was examined as R.W.1, whose evidence is that he was the driver of the bus bearing No. MH-20D-4693, when the bus reached near to Gayatri Sugar Factory at 8.45 P.M. he was proceeding on the left side of the road towards Hyderabad side. One lorry came from opposite direction and one motor cycle came from beyond the said lorry, along with pillion rider. The motor cyclist suddenly over taken the lorry and dashed the bumper of the bus and both the rider

and pillion rider are fell down on the road. He stopped the bus and got down. Meanwhile, one jeep came from Nizamabad side, he stopped the jeep and sent the injured persons to Government Hospital, Kamareddy, along with conductor of the bus and he proceeded to Kamareddy bus depot and informed the same to the Manager of the depot about the accident. During the cross examination, R.W.1 admits that he has not informed to his superior officer, in writing that there was no negligence on his part. Again says that he gave in writing to the respondent Corporation that the accident was occurred not due to his negligence. But the same complaint is not produced by the respondents, who are parties to this claim petition, for consideration of the Court.

11. Ex.B1 is the certified copy of the judgment in C.C. No.84/2002, according to which RW-1 herein, who is the accused was acquitted on the ground that :

> *To prove the guilt for the offence U/s.304-A I.P.C., the prosecution has to establish that the accused drove the crime vehicle on the relevant point of time and must be identified by the witnesses and as well as they have state that the crime vehicle was driven in a rash and negligent manner. In the instant case all \the above ingredients have not been proved by any of the prosecution witnesses. Therefore, I find the accused is not guilty for the alleged offence.*

12. A perusal and consideration of the judgment goes to suggest that P.W.1, the complainant went to the accident spot only after he

came to know about the incident and P.W.2 and P.W.3, who are wives of both the deceased and directly came to the hospital. P.W.4, 5 and 6, are eye witnesses of the accident, as per the prosecution, and among them, P.W.4's evidence is that on hearing some noise, he went to the accident spot and saw that two persons received grave injuries and the bus was present on that place and the injured persons were shifted to the hospital. and he contended that driver of the bus turned hostile. P.W.5 speaks that on hearing the sound he came out of the Dhaba and shifted the injured persons to the hospital. The evidence of P.W.6, who is a conductor working in Mukbad Depot is that in the outskirts of Kamareddy near Sugar Factory, their bus was stopped. He got down and noticed that public gathered and a motor bike and injured persons lying on the road. The accused came to police station and gave report in P.S. The Police came to the place of accident and asked him to submit S.R. and he gave copy of S.R. to the police. During his corss-examination he admitted that he does not know how the accident has taken place. The alleged eye witness P..W.4 to 6 does not support the prosecution case. Therefore, the Trial Court while acquitting the accused, found that the prosecution failed to establish that the accused drove the crime vehicle at the relevant point of time and none of the witnesses have identified the driver and also none of the witnesses spoke that the driver drove in rash and negligent manner.

13. But, now in the present case the driver himself was examined as RW.1 and admits that he was the driver of the offended bus

bearing No. MH2-0D-4693 at the relevant point of time and he also informed that he himself shifted the injured to the Government Hospital. He also intimated about the accident in the Kamareddy Depot. Therefore, the Tribunal rightly came to the conclusion that except RW.1, no other independent eye witness was examined to rebut the evidence of PW-2 and the documentary evidence under Ex.A.1 to A-3 and Ex.B1 to Ex.B3. The conductor of the bus is a proper person to explain about the accident. But the respondents did not choose to examine the said conductor or the passengers of the bus to rebut the evidence of the claimants and to prove that the accident was due to rash and negligent driving of the rider of the motor cycle bearing No. AP-25/C-611.

14. In such circumstances, I find that the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the bus bearing No. MH2-0D-4693 and there is no negligence on the part of the rider of the TVS Suzuki motor cycle bearing No. AP-25-C-611, is legal and tenable.

15. With regard to the age and income of the deceased at the time of accident, there is only evidence of the wife PW1, whose evidence is that by the date of accident her husband was 30 years and they are Padmashali by caste and her husband used to do gold business and earning Rs.15,000/- per month, besides that they owned three acres of land used to cultivate vegetables and paddy and earning Rs.1,20,000/- per annum.

16. The claimants filed Ex.A4- Income Certificate, issued by the M.R.O. dated 02.03.2005. The certificate reveals that it has been issued on the basis of the certification made by the concerned Panchayat Secretary and Mandal Revenue Inspector. According to the said Ex.A4, acres 3.02 cents stood in the name of the P.W.1, who is the wife of the deceased, those lands are situated at Mathusangam village and the husband of P.W.2 used to cultivate land by rising maize, sugar cane and sunflower. The annual income on cultivation of crops is Rs.1,25,000/-. Apart from the cultivation, the deceased was doing textile and plots business and was earning Rs.10,000/- to 15,000/- per month.

17. The deceased died in an accident and the above mentioned Ex.4-Income Certificate is issued only for the purpose of claiming compensation. Ex.A4 is a certificate issued by Mandal Revenue Officer. This certificate itself shows that it was not issued to the knowledge of the M.R.O. and it was issued basing on the certification made by Panchayat Secretary and Mandal Revenue Inspector. The Mandal Revenue Officer, Panchayat Secretary and Mandal Revenue Inspector are the proper persons to speak about the contents of the Ex.A4. But none of them were examined. Therefore, Ex.A4 is not a proof as contemplated under law.

18. The further contention of the claimants is that by doing cloth business the deceased used to earn Rs.15,000/- per month. If that is so, the claimants have to produce license for doing such business or income tax returns in support of family income, particularly, when the claimants stated and P.W.1 deposed that the deceased used to

earn Rs.1,20,000/- per annum, on cultivation and Rs.15,000/- on business. Admittedly, the claimants have not filed any such license and income tax returns to prove that the deceased was doing textile business and cultivation.

19. But the Tribunal, having considered Ex.A8-Pattadar Pass Book, on the evidence of P.W.1 that there was a acres 3.02 gts.. of land in the name of P.W.1 and her husband doing cultivation, asserted the monthly income of the deceased as Rs.4,500/-, having deducted one third towards personal expenditure of the deceased, arrived monthly income at Rs.3,000/- and annual income Rs.36,000/-.

20. Coming to the age of 3rd, 4th and 5th petitioners there is no any documentary evidence to show their age, but petitioners filed bonafide certificates of the petitioners 3 to 5. According to Ex.A5 to Ex.A7, the 3rd petitioner / claimant born on 08.03.1994, the 4th petitioner/claimant born on 04.05.1997 and 5th petitioner/claimant born on 22.08.1998.

21. The evidence of P.W.1 is that her husband was 30 years old by the date of death. Admittedly P.W.1 did not file any document to show his age as 30 years. In Ex.A1-F.I.R, Ex.A2-Inquest Report and Ex.A3-Remand case dairy, the age of the deceased was noted as 33 years. So the Tribunal in the absence of any such documentary evidence, rightly came to the conclusion that the age of deceased is 33 years and applied multiplier 17.

22. The respondents did not file any cross objections or appeal, questioning the multiplier and it is the claimants, who filed the present appeal. Therefore, I did not find any reason to interfere with the multiplier applied by the Tribunal. The Tribunal, by considering the age of the deceased as 33 years and monthly income as Rs.4,500/- after deduction 1/3 of the income towards personal expenditure of the deceased, arrived monthly income at Rs.3,000/- per month and annual income at Rs.36,000/- and applied 17 as multiplier and assessed the compensation at Rs.6,12,000/-

23. Besides that the Tribunal awarded Rs.15,000/- towards loss of consortium, and Rs. 2,500/- towards funeral expenses, and awarded Rs.6,29,500/- as a total compensation.

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24. The Tribunal, admittedly, did not award any amount towards loss of love and affection to the petitioners 3 to 5 and also loss of estate. Therefore, the judgment awarded to the extent of loss of consortium, funeral expenses, required modification in view of recent decisions in **National Insurance Company Limited Vs. Pranay Sethi and Ors.,** wherein the apex Court held that by determining of the multiplier and the compensation of living expenses, the Tribunals and Courts shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma & Ors. Vs. Delhi Transport Corporation and Ors. (2009)6 SCC 121. The selection of multiplier shall be as indicated in the table in Sarla Verma read with paragraph 42 of the judgment. The Apex Court decided the reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses

should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The above figures should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.

25. So, by applying the above decision to the facts of the present case, the amount awarded towards loss of consortium to the 2nd petitioner and funeral expenses of the deceased has to be modified. Accordingly, the amount of Rs. 15,000/- towards consortium is modified and enhanced to 40,000/-. The amount awarded towards funeral expenses is enhanced to Rs.15,000/- .Since no amount was granted towards loss of estate, an amount of Rs. 15,000/- is granted towards loss of estate besides that, the petitioners 3 to 5, who are the children of the deceased aged 14 years, 12 years and 10 years respectively lost love and affection of their father. Hence, I award an amount of Rs.30,000/- towards loss of love and affection to the petitioners, which was not awarded by the Tribunal. Accordingly, I found that the Tribunal erred in awarding meagre amount towards consortium, and funeral expenses and also erred in not granting any amount towards loss of love and affection to the petitioners 3 to 5 and also for loss of estate, for which the petitioners are entitled to. As per the above decisions, while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years,

the addition should be 15%. But here, as the Tribunal as well as this Court considered the income of the deceased by cultivation of three crops which is not self employment or is a fixed salary, the petitioners may not be entitled to future prospects and the Tribunal rightly has not granted any such amounts towards future prospects.

26. In view of the above issues the total compensation is arrived at as follows:

Compensation for loss of earnings	Rs.	6,12,000-00
towards consortium	Rs.	40,000-00
funeral expenses	Rs.	15,000-00
Compensation for loss of estate	Rs.	15,000-00
Compensation towards love and Affection	Rs.	30,000-00
Total Compensation	Rs.	7,12,000-00

27. In the result, the appeal is allowed, by setting aside the award and decree dated 08.03.2006 and in O.P.No.1994/2003 on the file of Motor Accident claim Tribunal (District Judge) at Nizamabad. The amount awarded by the Court below is modified to a total amount of Rs.7,12,000/- towards compensation to the petitioners against the respondents 1 and 2 jointly and severally with interest rate 7.5% per annum on the said amount from the date of petition i.e. 16.12.2003 till the date of realization.

28. The respondents 1 and 2 are directed to deposit the amount after deducting the amount already paid within a period of 45 days from the date of receipt of a copy of this order.

29. The awarded compensation amount is apportioned among the claimants with proportionate costs and interest as below:

1st Claimant -	Rs. 75,000/-
2nd Claimant -	Rs.3,37,000/-
3rd Claimant -	Rs.1,00,000/-
4th Claimant -	Rs.1,00,000/-
5th Claimant -	Rs.1,00,000/-

30. The amount awarded to claimant Nos.3 to 5 shall be kept in a fixed deposit in any nationalized bank till their attaining of majority. After attaining the majority, according to their share, they can make an application seeking permission to withdraw the amount before the Tribunal.

31. On deposit of the amount, the claimant Nos.1 and 2 are permitted to withdraw their share of amount.

32. Advocate Fee is fixed at Rs.2,500/-

33. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

Dated: 29-12-2017

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